

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARQUES PHILLIPS and CYNTHIA
PHILLIPS,

Plaintiffs,

Civ. S-04-0377 FCD PAN

v.

CITY OF FAIRFIELD, et al.,

ORDER

Defendants.

—oOo—

Defendants' ex parte application to shorten time is granted.
E. D. Cal. L. R. 6-144. As oral argument is unnecessary to
resolve this matter, defendants' motion is submitted on the
papers.

Defendants seek an order compelling plaintiff Marques
Phillips to submit to an independent medical examination (IME)
based on his assertion of physical injuries caused by defendants.
Plaintiff concedes his physical condition is "in controversy"

1 (Fed. R. Civ. P. 35(a)) and defendants demonstrate additional
2 "good cause" (id.) for an IME based upon the unopposed assertion
3 plaintiff "has suffered subsequent injury from unrelated
4 incidents" (Ex Parte Application, at p. 3).

5 Plaintiff's only objection is that defendants should be
6 first required to reimburse plaintiff \$250, the amount he paid
7 defendants after missing his first scheduled IME March 17.
8 Plaintiff makes this assertion "out of fairness" based on his
9 uncompensated appearance for the second scheduled IME June 16
10 which the examiner failed to conduct that day. A third scheduled
11 IME August 18 was cancelled after plaintiff's newly retained
12 counsel declined to agree to it.

13 Plaintiff's objection is overruled and his request for
14 reimbursement denied. It is not the responsibility of this court
15 to assess the fairness and rectify any perceived imbalance in the
16 parties' extrajudicial agreements.

17 For good cause shown defendants' motion to compel
18 plaintiff's independent medical examination is granted.

19 Plaintiff shall appear at 1:30 p.m., September 29, 2005, at
20 the office of Dr. Peter Slabaugh, M.D., Webster Orthopedic
21 Medical Group, 3300 Webster Street, Suite 1200, Oakland,
22 California, and submit to a standard physical medical
23 examination. Plaintiff shall answer all proper questions
24 submitted to him by the examiner for the purpose of making a
25 proper assessment and diagnosis.

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1 Defendants shall bear the costs of the examination.

2 So ordered.

3 Dated: August 29, 2005.

4 /s/ Peter A. Nowinski

5 PETER A. NOWINSKI

6 Magistrate Judge